

July 9, 2021

Senator Carol Blood
District 3
State Capitol Building, Room 1021
Lincoln, NE 68509

Dear Senator Blood,

This letter is a joint response from the Department of Environment and Energy (NDEE) and the Department of Agriculture (NDA) to your June 21, 2021, letter regarding the situation at AltEn, LLC, in Mead, Nebraska. The Department of Natural Resources (DNR) has no statutory or regulatory authority associated with the operation of this facility and is not included in this response.

We assure you that protecting the environment and the public health of the Mead community, residents of Saunders County, and all Nebraskans is of primary importance to us. Transparency is important in this matter. However, as you know, the Nebraska Attorney General filed a lawsuit against AltEn on NDEE's behalf on March 1, 2021. Because of the ongoing litigation, there is some information we are unable to share.

We have divided this response into several sections to best answer the questions raised in your letter. These sections include the regulatory actions taken by NDEE and NDA, coordination with EPA, sampling activities at the AltEn site and area around AltEn, the Voluntary Cleanup Program, the regulatory authority of NDEE, how to access information on the NDEE website, lists of information enclosed with this letter, and referral of certain questions to other agencies or political subdivisions better equipped to answer your questions. Between this response and enclosed documents, and within the limitation noted above, we have answered the questions you have posed.

As you state in your letter, the situation at AltEn is unusual. NDEE continues to be engaged and is diligently working toward finding answers and solutions to questions and the environmental problems at the AltEn facility. As addressed below, U.S. Environmental Protection Agency (EPA) has assisted and continues to assist NDEE with finding answers and solutions to this unusual situation.

REGULATORY ACTIONS TAKEN BY THE NDEE

NDEE's relevant statutory authority comes from the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 *et seq.* and the Integrated Solid Waste Management Act (ISWMA), Neb. Rev. Stat. § 13-2001 *et seq.* NDEE also has delegated permitting authority under the Clean Air Act (CAA), Clean Water Act (CWA), and the Resource Conservation and Recovery Act (RCRA) from the EPA.

Through its statutory and delegated authorities, NDEE has been actively regulating AltEn since January 2015 when the facility started up its ethanol operations. Since 2017, NDEE has conducted over 180 site visits at the AltEn facility and is currently conducting, on average, three site visits each week. NDEE has also taken many regulatory actions against AltEn by issuing fifteen notices of violations and letters of non-compliance and three administrative orders since 2017. All of this information—permits, regulatory actions, and site visits—was used to inform and develop the Complaint filed against AltEn on behalf of NDEE in March 2021 after AltEn failed to meet the NDEE-imposed deadline to remove and dispose of the stockpiled distiller's grain.

REGULATORY ACTIONS TAKEN BY THE NDA

NDA's relevant statutory authority comes from the Nebraska Commercial Fertilizer and Soil Conditioner Act (Soil Conditioner Act), Neb. Rev. Stat. § 81-2,162.01 *et seq.* Pursuant to the Soil Conditioner Act, AltEn's distiller's grain was registered as a soil conditioner on October 23, 2018. NDA conducted a site inspection of AltEn and took an official sample of AltEn's soil conditioner on March 29, 2019. This inspection is documented in the report done by Tim Creger, NDA Pesticide/Fertilizer Program Manager, which is enclosed. NDA consulted with EPA regarding the pesticide residues in the sample results and issued a Stop-Use and Stop-Sale Order on AltEn's soil conditioner on May 17, 2019, pursuant to its authority under the Soil Conditioner Act.

On June 17, 2019, an NDA inspector took another sample of AltEn's soil conditioner. This sample also contained pesticide residue levels very similar to those previously sampled and tested. A copy of the analysis is enclosed.

On July 22, 2019, NDA informed AltEn that the Stop-Use and Stop-Sale Order remained in effect and encouraged AltEn to resolve the matter by voluntarily asking NDA to cancel the registration of its soil conditioner. After meeting with NDA officials, AltEn requested that its soil conditioner no longer be registered.

On August 14, 2019, the soil conditioner registration was cancelled by NDA's Director. Once the registration was cancelled, the distiller's grain was no longer a soil conditioner and ceased to be under NDA's jurisdiction.

NDA does not regulate waste disposal. NDA also does not regulate treated seeds because they are considered a treated article rather than a pesticide under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, pursuant to 40 C.F.R. § 152.25. NDA has no further regulatory authority regarding the AltEn site.

COORDINATION WITH EPA

Although NDEE is the lead regulatory agency, EPA Region 7 is currently providing assistance at the request of NDEE and is closely monitoring the situation at the AltEn facility. Together, NDEE and EPA are exploring all available options for addressing the environmental issues at the site.

At NDEE's request, EPA issued two letters regarding land application of the contaminated distiller's grain in November 2020 and the contaminated wastewater in January 2021. These letters are enclosed.

Also, at NDEE's request, EPA provided emergency response assistance regarding a spill at the plant that occurred on Feb. 12-13, 2021. EPA was on-site to assess the spill, collect additional samples, and consult on mitigation and cleanup efforts.

For some of your questions, EPA is the more appropriate regulatory agency to provide any answers. Please contact Curtis Carey, Office of Public Affairs, USEPA Region 7, Carey.Curtis@epa.gov, 913-551-7506, for information regarding the following:

- Scientifically-based information or studies on whether the neonicotinoid toxins are expressed by plants surrounding the AltEn site.
- Does application of a pesticide, herbicide or insecticide to a non-crop or non-soil substance change the definition and thereby permit circumvention of licensure requirements and/or disposition requirements?
- An accounting of the on-site investigations or inspections carried out by EPA in reaction to complaints and/or infractions.
- Clarification as to what organization oversees that the clear and legal language on seed labels is not violated.
- Role EPA has played in helping NDEE to evaluate the issues at AltEn.
- Information about the seed companies.

SAMPLING ACTIVITIES

NDEE has conducted, and continues to conduct, sampling of the wastes at the AltEn facility, including distiller's grain, wastewater, and biochar. NDEE has also sampled private wells near the AltEn facility. NDEE continues to collect sampling results from third parties at and around the AltEn site. Sampling results are enclosed with this letter.

To ensure the proper compounds are sampled, NDEE created an analyte list for its use and use by third parties, including AltEn and the AltEn Facility Response Group. Our analyte list is based on compounds that have been previously detected at the facility, compounds that are related to other analytes detected at the facility, and technical input provided by the Office of Pesticide Programs at EPA. This technical input includes recommendations based on pesticides that are commonly used in treated seed coatings. Our analyte list is evolving, and modifications will continue to be made as we acquire more information.

VOLUNTARY CLEANUP PROGRAM

Several of the inquiries from your letter request detail on future clean-up activities at the AltEn facility. On June 10, 2021, a group of seed companies, collectively known as the AltEn Facility Response Group, filed an application with NDEE to join the Nebraska Voluntary Cleanup Program (VCP) to address environmental contamination at the AltEn facility. This application and a Memorandum of Agreement were approved on June 30, 2021.

As provided in the Memorandum of Agreement, the AltEn Facility Response Group is continuing to voluntarily implement several interim response actions, including drawdown and maintenance of wastewater lagoon levels, evaluation of lagoon liners, providing emergency response, and managing environmental impacts from the distiller's grain and waste materials at the AltEn

facility through containment and stormwater management. These interim response actions are currently taking place. Clean Harbors, an environmental and industrial services provider, has prepared an area at the AltEn facility to construct seven additional temporary water storage tanks, which in combination with the previously constructed temporary tanks, brings the total number to ten temporary tanks. These temporary tanks will be used to store treated wastewater or to store wastewater before treatment. Secondary containment will be in place for the new tank area, which includes berms and a synthetic liner.

The VCP is a results-based approach to environmental cleanup that allows NDEE to review and oversee remediation efforts. Through the VCP, applicants develop a Remedial Action Plan (RAP) for NDEE review and approval, with public participation, that assures compliance with state and federal requirements. The AltEn Facility Response Group is currently in the process of developing the RAP. When the RAP is submitted, it will be reviewed by NDEE. NDEE will either preliminarily approve the RAP or disapprove the RAP and send it back to the applicant with technical review comments. If the RAP is given preliminary approval, the Department will issue public notice of its intent to approve the plan. The public could then either submit written comments or request a hearing on the proposal.

A broad overview of the VCP can be found on the following webpage: <http://dee.ne.gov/NDEQProg.nsf/OnWeb/VCP>. Copies of the overview of the VCP, VCP Application, letter approving the VCP Application, and the fully executed Memorandum of Agreement are enclosed with this letter.

REGULATORY AUTHORITY OF NDEE

Several of the questions in your letter relate to NDEE's regulatory and enforcement authority. NDEE's relevant regulatory authority comes from NEPA and ISWMA. NDEE also has delegated authority from the EPA to issue permits under the CAA, CWA, and RCRA.

NEPA defines NDEE's enforcement authority. NDEE does not have unilateral authority to issue fines. Rather, NDEE may seek civil penalties through an enforcement action by the Nebraska Attorney General's Office in state district court pursuant to Neb. Rev. Stat. § 81-1508.02(2) and injunctive relief pursuant to Neb. Rev. Stat. § 81-1508.

NDEE regulates landfills in Nebraska through ISWMA and Title 132 – Integrated Solid Waste Management Regulations.

The storage of pesticides and fertilizer are regulated under Title 198 – Rules and Regulations Pertaining to Agricultural Chemical Containment. These rules and regulations require secondary containment for bulk liquid and dry pesticides, and bulk liquid fertilizer storage, neither of which were stored at AltEn.

ASSURANCE OF FINANCIAL RESPONSIBILITY

Neb. Rev. Stat. § 81-1505(21) authorizes the Environmental Quality Council (EQC) to adopt rules and regulations requiring all new or renewal permit or license applicants regulated under NEPA, ISWMA, or the Livestock Waste Management Act to establish proof of financial responsibility, but gives discretionary authority to the EQC to exempt classes of permittees or licensees from these requirements. The EQC has adopted financial responsibility requirements for compost permits in Title 132. The EQC has exempted permits issued under Title 119 – Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant

Discharge Elimination System and Title 129 – Nebraska Air Quality Regulations from financial responsibility requirements.

AVAILABILITY OF RESOURCES AND INFORMATION ABOUT ALTEN ONLINE

In order to provide information to the public during the litigation, NDEE developed a special webpage on its website entitled "Information and Updates for AltEn near Mead, Nebraska" to communicate important information to the public regarding what is happening at the site. You may access the NDEE webpage through this link: <http://dee.ne.gov/Press.nsf/pages/AltEn>. This webpage is regularly updated and remains the best source of up-to-date information regarding the AltEn site.

In addition, NDEE makes all public facility records available online through its public records portal, which is updated regularly. You may access the public records portal by linking to: <https://ecmp.nebraska.gov/publicaccess/viewer.aspx?&MyQueryID=340> using the Facility ID # 84069 for AltEn, LLC, and # 43238 for the Mead Cattle Company. You can review specific documents from the file, as listed, or you can sort documents by clicking on the various column headings. For example, if you click on the column heading 'Document Type' you could find documents specific to permits issued by scrolling to 'DEQ Issued Permit' grouping. Additionally, when opening select documents, you can use a key word search to look for specific information within the document.

NDEE DOCUMENTATION ENCLOSED WITH THIS LETTER

We are enclosing a number of documents providing responses to the questions in your June 21, 2021, letter. These include copies of:

- The Complaint filed in State v. AltEn, C12-36, District Court of Saunders County, Nebraska, filed March 1, 2021;
- Two Emergency Complaints and Orders filed by NDEE in February of 2021;
- The April 24, 2019, Consent Order;
- Copies of permits held by AltEn;
- Copies of all Letters of Non-Compliance, Notices of Violation, and Letters of Warning sent to AltEn since 2017;
- Sampling results beginning in 2019;
- Groundwater Monitoring Reports;
- Recent Annual Land Application Reports;
- Step 6/7 Process;
- 189 site inspection reports beginning in 2017;
- Minnesota Department of Health, Health Risk Assessment Unit Guidance;
- EPA Guidance;
- Voluntary Cleanup Program documents.

NDA DOCUMENTATION ENCLOSED WITH THIS LETTER

- January 29, 2019 (date of collection) – Sample Analysis dated March 1, 2019;
- March 29, 2019 (date of collection) – Sample Analysis of Pesticides dated April 19, 2019;
- March 29, 2019 (date of collection) – Sample Analysis of Metals dated April 19, 2019;
- April 23, 2019 – AltEn Case Report;

- May 17, 2019 – Stop-Use Stop-Sale Order;
- June 17, 2019 (date of collection – Sample Analysis dated July 18, 2019;
- August 14, 2019 – Registration Cancellation.

QUESTIONS ABOUT THE VILLAGE OF MEAD AND SAUNDERS COUNTY

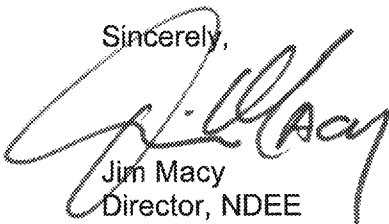
Questions raised in your letter relating to the Village of Mead and Saunders County should be addressed directly to those political subdivisions. NDEE and NDA cannot speak on their behalf.

CONCLUSION

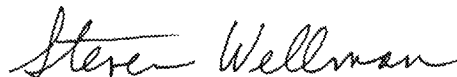
We appreciate the opportunity to share this information with you and to answer your questions to the extent answers are known or can be provided. NDEE will continue to regulate activities at the AltEn facility and to coordinate with EPA to ensure the environmental problems at the AltEn facility are remediated.

NDEE will also continue working with the AltEn Facility Response Group as it develops a RAP to address the long-term response actions needed at the AltEn facility. In the meantime, NDEE will continue to monitor and review the interim response actions currently being conducted by the AltEn Facility Response Group. This Group's willingness to enter the VCP, continue interim response actions, and develop solutions to the environmental problems at the AltEn facility with NDEE oversight and review is a positive step forward.

Sincerely,



Jim Macy
Director, NDEE



Steve Wellman
Director, NDA

Enclosures to Senator Blood Response

District Court Filing:

Complaint for State v. AltEn, C12-36, District Court of Saunders County, Nebraska, filed March 1, 2021

NDEE Administrative Orders:

Emergency Complaint and Order, Case No. 3546, filed February 20, 2021

Emergency Complaint and Order, Case No. 3540, filed February 4, 2021

Consent Order, Case No. 3483, filed April 24, 2019

Permits:

Air Quality Class II Operating Permit # OP16S2-001

Air Quality Construction Permit # CP14-066

Air Quality Construction Permit # CP13-010

Air Quality Construction Permit issued to E³ BioFuels-Mead, LLC, # CP06-0012

Air Quality Construction Permit issued to Nebraska BioClean – Mead, LLC, on January 27, 2005
(no permit number)

WWF Construction Permit # 05-0158

WWF Construction Permit # 2018-0060

NPDES Permit # NE0137634

Authorization # NER910444 to discharge under NPDES Industrial Storm Water General
Permit NER910000

Authorization # CSW-201802742 to discharge under NPDES Construction Storm Water General
Permit NER160000

Solid Waste Management Permit # NE0104447

Authorization # NE0210591 Class V Well Underground Injection (5W32 large capacity
septic system)

Letters of Non-Compliance:

June 15, 2021

June 1, 2021

May 20, 2021

April 6, 2021

February 17, 2021

February 16, 2021

October 2, 2020

Notices of Violation:

May 1, 2020

January 30, 2020

September 23, 2019

September 13, 2019

August 8, 2019

April 24, 2019

August 13, 2018

August 9, 2018

July 23, 2018

Letter of Warning:

December 18, 2017

Sampling:

Sampling Date	Location	Letter Sent/Analysis
5/20/21	Keiser Pond	7/1/21
5/14/21 & 5/26/21	Compost Pad (Nutrient Advisors for AltEn)	6/21/21
3/26/21	Keiser Pond	5/7/21, 4/27/21
3/14/21	Distiller's grain composite	4/13/21
3/9/21	Virgl Private Well	5/24/21
3/9/21	Deerson Private Well	5/14/21, 4/13/21
3/9/21	Hanson Private Well	4/13/21
3/9/21	Weible Private Well	4/13/21
3/3/21	Sediment Sample – US Army Reserve	4/9/21, 3/31/21
3/3/21	Biochar	3/26/21
3/3/21	Discharge (AltEn sample)	3/8/21
3/2/21	Keiser Pond	4/9/21
3/1/21	Loftus Private Well	3/25/21
3/1/21	Shaw Private Well	3/25/21
2/26/21	Village Mead City Park	4/9/21, 3/25/21
2/26/21	Army National Guard Public Water Supply	3/25/21
2/26/21	NU Eastern NE Research & Extension Center	3/25/21
2/22/21	Keiser Pond	4/9/21
2/14/21	Discharge	2/22/21
2/13/21	Discharge (EPA sample)	3/4/21
2/13/21	Discharge	2/22/21
2/12/21	Discharge	3/2/21
2/12/21	Discharge	2/27/21
2/12/21	Discharge	2/25/21

December 4, 2019 – Laboratory Wastewater Analysis (sample November 12, 2019)

November 12, 2019 – Wastewater Sampling Collection report

August 27, 2019 – Wastewater (sample July 1, 2019)

April 29, 2019 – Laboratory Wastewater and distiller's grain Analysis (test April 8, 2019)

Groundwater Monitoring Reports:

June 21, 2021

April 29, 2021

January 19, 2021

Annual Land Application Reports:

May 7, 2021

March 2, 2020

Voluntary Cleanup Program (VCP):

Overview of the VCP

VCP Application

Letter approving the VCP Application

Memorandum of Agreement

EPA Guidance:

November 17, 2020 Letter from EPA regarding DGS

January 13, 2021 Letter from EPA regarding wastewater

Human Health and Ecological Benchmarks for Seed Treatment Pesticides

Title 118 Step 6/7 Process:

April 14, 2021 – NDEE Letter Request

May 7, 2021 – AltEn Response

June 15, 2021 – Letter of Non-Compliance

Minnesota Department of Health, Health Risk Assessment Unit:

Thiamethoxam and Drinking Water

Site Inspection Reports:

189 individual reports

Nebraska Department of Agriculture Documents:

January 29, 2019 (date of collection) – Sample Analysis dated March 1, 2019

March 29, 2019 (date of collection) – Sample Analysis of Pesticides dated April 19, 2019

March 29, 2019 (date of collection) – Sample Analysis of Metals dated April 19, 2019

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